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AUTHORITY: 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703-5705, 5711-5713, 5721-5723, 5741, 5751, 5753, 5761-5763, 6109, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6876, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 27 U.S.C. 205; 31 U.S.C. 9301, 9303, 9304, 9306.

SOURCE: 26 FR 8174, Aug. 31, 1961, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

EDITORIAL NOTE: For nomenclature changes to Part 270, see T.D. ATF-179, 49 FR 29595, July 23, 1984.

Subpart A—Scope of Regulations

§ 270.1 Manufacture of cigars and cigarettes.

This part contains the regulations relating to the manufacture of cigars and cigarettes; the payment by manufacturers of tobacco products of internal revenue taxes imposed by 26 U.S.C. Chapter 52; and the qualification of and operations by manufacturers of tobacco products.

[T.D. 6871, 31 FR 32, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55854, Sept. 28, 1979]

§ 270.2 Territorial extent.

The provisions of the regulations in this part shall apply in the several States of the United States and the District of Columbia.

Subpart B—Definitions

§ 270.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

Associate Director (Compliance Operations). The Associate Director (Compliance Operations) in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director.

ATF officer. An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Bank. Any commercial bank.

Banking day. Any day during which a bank is open to the public for carrying on substantially all its banking functions.

CFR. The Code of Federal Regulations.

Cigar. Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of paragraph (2) of the definition for cigarette).

Cigarette. (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(2) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1) of this definition.

Commercial bank. A bank, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Re-

serve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank in New York.

Determined or determination. When used with respect to the tax on cigars and cigarettes, determined or determination means that the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes) of cigars and cigarettes and wholesale price of large cigars to be removed subject to tax have been established as prescribed by this part so that the tax payable with respect thereto may be calculated.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, D.C.

Director of the service center. The Director, Internal Revenue Service Center, in any of the Internal Revenue regions.

District director. A district director of internal revenue.

Electronic fund transfer or EFT. Any transfer of funds effected by a manufacturer's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

Export warehouse. A bonded internal revenue warehouse for the storage of cigars, cigarettes, and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

Export warehouse proprietor. Any person who operates an export warehouse.

Factory. The premises of a manufacturer of tobacco products as described in his permit issued under 26 U.S.C.

Chapter 52.

Fiscal year. The period which begins October 1 and ends on the following September 30.

In bond. The status of cigars, cigarettes, and cigarette papers and tubes,

which come within the coverage of a bond securing the payment of internal revenue taxes imposed by 26 U.S.C. 5701 or 7652, and in respect to which such taxes have not been determined as provided by regulations in this chapter, including (a) such articles in a factory, (b) such articles removed, transferred, or released, pursuant to 26 U.S.C. 5704, and with respect to which relief from the tax liability has not occurred, and (c) such articles on which the tax has been determined, or with respect to which relief from the tax liability has occurred, which have been returned to the coverage of a bond.

Large cigarettes. Cigarettes weighing more than three pounds per thousand.

Large cigars. Cigars weighing more than three pounds per thousand.

Manufacturer of tobacco products. Any person who manufactures cigars or cigarettes, except that such term shall not include (a) a person who produces cigars or cigarettes solely for his own personal consumption or use; or (b) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Package. The container in which cigars or cigarettes are put up by the manufacturer and offered for sale or delivery to the consumer.

Permit number. The combination of (1) the letters indicating the kind of permit, (2) the identifying number, and (3) the name or abbreviation of the State (or the District of Columbia) in which the factory is located, as assigned to the permit by the regional director (compliance); for example, "TP-999-Utah".

Person. An individual, partnership, association, company, corporation, estate, or trust.

Region. A Bureau of Alcohol, Tobacco and Firearms Region.

Regional Director (compliance). The principal regional official responsible for administering regulations in this part.

Removal or remove. The removal of cigars or cigarettes from the factory or release from customs custody, including the smuggling or other unlawful importation of such articles into the United States.

Service center. An Internal Revenue Service Center in any of the Internal Revenue regions.

Service center director. A director of an internal revenue service center.

Small cigarettes. Cigarettes weighing not more than three pounds per thousand.

Small cigars. Cigars weighing not more than three pounds per thousand.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

Tobacco products. Cigars and cigarettes. The term does not include smoking tobacco, chewing tobacco, or snuff.

Treasury Account. The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

U.S.C. The United States Code.

Wholesale price. The manufacturer's or importer's suggested delivered price at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. Chapter 52 or section 7652, but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Associate Director (Compliance Operations), as provided in § 270.22(i).

(26 U.S.C. 7805 (68A Stat. 917), 27 U.S.C. 205 (49 Stat. 981 as amended), (82 Stat. 959), and Sec. 38, Arms Export Control Act (90 Stat. 744) Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6301); June 29, 1956, ch. 462, 70 Stat. 391 (26 U.S.C. 6301)) (T.D. ATF-48, 43 FR 13553, Mar. 31, 1978; 44 FR 55854, Sept. 28, 1979, as amended by T.D. ATF-77, 46 FR 3007, Jan. 13, 1981)

Subpart C—Taxes

§ 270.21 Cigar tax rates.

(a) On cigars, manufactured in or imported into the United States, the following taxes are imposed by law:

(1) Small cigars. Seventy-five cents per thousand.

(2) Large cigars. Eight and one-half percent of the wholesale price, but not more than \$20 per thousand.

(b) Cigars not exempt from tax under 26 U.S.C. Chapter 52 and the provisions of this part which are removed but not intended for sale are taxed at the same rate as similar cigars removed for sale.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1414, as amended by sec. 2128, Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5701))

(T.D. ATF-80, 46 FR 18309, Mar. 24, 1981)

§ 270.22 Determination of wholesale price of large cigars.

(a) General rule. All cigars of the same brand, size, and packaging are taxed at the same rate except where otherwise specifically provided. When the manufacturer establishes a suggested delivered price to retailers (wholesale price), he shall do so according to the principles in the definition of "wholesale price" in § 270.11 and in this section. "Suggested delivered price" is the price at which the manufacturer intends for the cigars to be sold to retailers, and based on which the manufacturer's price to distributors and wholesalers is established through the usual trade discount. The price at which a cigar is in fact usually sold to retailers in transactions at arm's length from the manufacturer is the best evidence of whether the manufacturer's suggested delivered price is properly set. While it is not expected that a manufacturer will exercise any control over the prices actually paid by retailers in transactions with independent distributors, it is the manufacturer's responsibility to exercise reasonable care to assure that his suggested price to retailers (wholesale price) used as the basis for tax determination is consistent with prices actually paid by retailers. (Where there is no suggested delivered price adequately supported by

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actual sales to retailers, see paragraph (i) of this section).

(b) Pricing for different packaging. If different bona fide wholesale prices are applicable to different types of packaging (e.g., boxes of 25 and box of 50), then the cigars in each type of packaging are taxed on the basis of their respective wholesale prices.

(c) Pricing of seconds. If some of otherwise identical cigar brand and size (1) are distinctive from other such cigars because of physical imperfections, (2) are offered to the consumer through clear labeling as "imperfect", "seconds", "throw-outs", or a comparable commonly understood term, and (3) the manufacturer has a separate wholesale price for such cigars, then they are taxed on the basis of this separate wholesale price.

(d) Combination packages. If a manufacturer has a wholesale price for combination package containing cigars of different sizes, the cigars are taxed based on that combination wholesale price. If there is no wholesale price for the combination, then the cigars are taxed based on their individual wholesale prices.

(e) Promotional pricing. Special promotional pricing arrangements whether applicable to all or only a part of removals, do not alter the taxable wholesale price of large cigars. For the purposes of applying this rule, any temporary reduction in price is presumed to be for promotional purposes.

(f) Removals for another person. If a manufacturer makes taxable removals of a brand and size of cigar only for its distribution by others who establish the suggested delivered price to retailers (wholesale price), then the tax is based on such wholesale price irrespective of the fact that it is not directly established by the manufacturer in making the taxable removals.

(g) Removals for sale to retailers only. If a manufacturer makes taxable removals of a brand and size of cigar for arm's length sales to retailers only, the tax is based on the manufacturer's selling price, applying the principle of inclusion and exclusion contained in the definition of "wholesale price" in § 270.11.

actual sales to retailers, see paragraph (i) of this section.

(b) *Pricing for different packaging.* If different bona fide wholesale prices are applicable to different types of packaging (e.g., boxes of 25 and boxes of 50), then the cigars in each type of packaging are taxed on the basis of their respective wholesale prices.

(c) *Pricing of seconds.* If some of an otherwise identical cigar brand and size (1) are distinctive from other such cigars because of physical imperfections, (2) are offered to the consumer through clear labeling as "imperfects", "seconds", "throw-outs", or a comparable commonly understood term, and (3) the manufacturer has a separate wholesale price for such cigars, then they are taxed on the basis of this separate wholesale price.

(d) *Combination packages.* If a manufacturer has a wholesale price for a combination package containing cigars of different sizes, the cigars are taxed based on that combination wholesale price. If there is no wholesale price for the combination, then the cigars are taxed based on their individual wholesale prices.

(e) *Promotional pricing.* Special promotional pricing arrangements, whether applicable to all or only a part of removals, do not alter the taxable wholesale price of large cigars. For the purposes of applying this rule, any temporary reduction in price is presumed to be for promotional purposes.

(f) *Removals for another person.* If a manufacturer makes taxable removals of a brand and size of cigar only for distribution by others who establish the suggested delivered price to retailers (wholesale price), then the tax is based on such wholesale price irrespective of the fact that it is not directly established by the manufacturer making the taxable removals.

(g) *Removals for sale to retailers only.* If a manufacturer makes taxable removals of a brand and size of cigars for arm's length sales to retailers only, the tax is based on the manufacturer's selling price, applying the principles of inclusion and exclusion contained in the definition of "wholesale price" in § 270.11.

(h) *Change in wholesale price.* When a manufacturer decides to change the wholesale price of a brand and size of large cigars, there may be some of these cigars which were removed before the price change decision and were tax determined on the basis of the old wholesale price, which in fact are later sold to retailers under the new wholesale price. In this situation, the cigars will be considered to have been properly tax determined, unless at the time of removal the manufacturer had reason to believe that the cigars would be sold under the new wholesale price, considering all information which was or should have been available to him. After the price change decision, cigars may properly be removed and tax determined on the basis of the old wholesale price if the manufacturer has reason to know, at the time of removal, that they will be sold to retailers before the new wholesale price is effective. Conversely, cigars removed after a price change decision which can reasonably be expected to be sold to retailers under the new wholesale price must be tax determined on the basis of the new wholesale price, even if the removal takes place before the new wholesale price is announced or becomes effective. A price change decision is held to be made at the earliest time during the price change considerations when it might reasonably be concluded that the decision to change the price had in fact been reached.

(i) *Determination of wholesale price by Associate Director (Compliance Operations).* The Associate Director (Compliance Operations) will determine the wholesale price for tax purposes where the manufacturer has no suggested delivered price to retailers as contemplated by the definition of "wholesale price" in § 270.11 and as discussed in paragraph (a) of this section. Listings of such wholesale prices and their comparable retail prices will be published as necessary in the ATF Bulletin (see § 71.41(d) of this chapter) for use by manufacturers in properly determining the tax on removals of large cigars for which there is no suggested delivered price to retailers. If a manufacturer has cigars which are not covered by the existing published

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listing, and for which he has no suggested delivered price to retailers, the manufacturer shall submit a written request to the Associate Director (Compliance Operations) for a determination of the wholesale price applicable to such cigars for tax purposes. If any of these cigars are removed before such determination, the manufacturer shall ascertain the wholesale price to the best of his ability based on the prices which are included in the published listing and other pertinent information available to him, and shall use that price for calculation and payment of the tax and for other tax purposes under this part, pending the determination by the Associate Director (Compliance Operations). If the wholesale price used by the manufacturer for tax payment differs from that subsequently determined by the Associate Director (Compliance Operations) to be the wholesale price for tax purposes, then the manufacturer shall make an adjustment in his tax return to correct the amount of tax paid. Any tax adjustment shall be made on the return covering the date on which notification of the wholesale price determination was received from the Associate Director (Compliance Operations).

(5 U.S.C. 552(a) (80 Stat. 383, as amended))
[T.D. ATF-40, 42 FR 5000, Jan. 26, 1977, as amended by T.D. ATF-92, 46 FR 46921, Sept. 23, 1981]

§ 270.23 Cigarette tax rates.

On cigarettes, manufactured in or imported into the United States, the following taxes are imposed by law:

(a) *Cigarettes removed before January 1, 1983, and on or after October 1, 1985*—(1) *Small cigarettes.* \$4 per thousand.

(2) *Large cigarettes.* \$8.40 per thousand; except that where such cigarettes are more than 6½ inches in length, the rate of tax is \$4 per thousand, counting each 2½ inches, or fraction thereof, of the length of each as one cigarette.

(b) *Cigarettes removed on or after January 1, 1983, but before October 1, 1985*—(1) *Small cigarettes.* \$8 per thousand.

(2) *Large cigarettes.* \$16.80 per thousand; except that where such ciga-

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rettes are more than 6½ inches in length, the rate of tax is \$8 per thousand, counting each 2½ inches, or fraction thereof, of the length of each as one cigarette.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1414, as amended (26 U.S.C. 5701))
[T.D. ATF-115, 47 FR 51862, Nov. 18, 1982]

§ 270.24 Classification of cigarettes.

For tax purposes, small cigarettes are designated Class A and large cigarettes are designated Class B.

(72 Stat. 1414; 26 U.S.C. 5701)

§ 270.25 [Reserved]

§ 270.26 Persons liable for tax.

The manufacturer of tobacco products shall be liable for the taxes imposed on cigars and cigarettes by 26 U.S.C. 5701: *Provided*, That when cigars and cigarettes are transferred in bond pursuant to 26 U.S.C. 5704, to the bonded premises of another such manufacturer or an export warehouse proprietor, the transferee shall become liable for the tax upon receipt by him of such products and the transfer shall thereupon be relieved of his liability for the tax. When cigars and cigarettes are released in bond from customs custody for transfer to the bonded premises of a manufacturer of tobacco products, the transferee shall become liable for the tax on such products upon release from customs custody. Any person who possesses cigars or cigarettes in violation of 26 U.S.C. 5751(a)(1) or (2), shall be liable for a tax equal to the tax on such products.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1415, as amended, 1424, as amended (26 U.S.C. 5703, 5751))

[T.D. 6871, 31 FR 32, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55854, Sept. 28, 1979]

§ 270.27 Assessment.

Whenever any person required by law to pay tax on cigars or cigarettes fails to pay such tax, the tax shall be ascertained and assessed against such person, subject to the limitations prescribed in 26 U.S.C. 6501. The tax so assessed shall be in addition to the

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penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of evident mathematical error, no such assessment shall be made until a person to whom notice has been afforded has shown cause against assessment. The person will be allowed 30 days from the date of such notice to show cause, in writing, against such assessment.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1415, as amended (26 U.S.C. 5703))

[T.D. 6871, 31 FR 32, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55854, Sept. 28, 1979]

Subpart D—Administrative Provisions

§ 270.41 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part. When a return, form, claim, or other document called for under this part is required by this part, or by the document itself, to be executed under penalties of perjury, it shall be executed under penalties of perjury.

(b) "Public Use Forms" (ATF Publication 1322.1) is a numerical listing of forms issued or used by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(c) Requests for forms should be mailed to the ATF Distribution Center, 3800 South Four Mile Drive, Arlington, Virginia 22206.

(5 U.S.C. 552(a) (80 Stat. 383, as amended))
[T.D. ATF-92, 46 FR 46921, Sept. 23, 1981]

§ 270.42 Authority of ATF officer to enter premises.

Any ATF officer may enter in daytime any premises where cigars or cigarettes are produced or kept, s